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NHTSA-2002-13219-3

October 17, 2002

BY AIR COURIER

Luke Loy
Office of Vehicle Safety Compliance
National Highway Traffic Safety Administration
400 Seventh Street, S.W., Room 6111
Washington, D.C. 20590

Re: Docket No. NHTSA-2002-13219, Petition Submitted By G&K Automotive Conversion, Inc., Seeking Import Eligibility Determination for MY 2002 Ferrari 360 Passenger Cars Manufactured Before September 1, 2002

Dear Mr. Loy:

Through its undersigned counsel, Ferrari North America, Inc. ("FNA") hereby submits its comments on the petition of G&K Automotive Conversion, Inc. ("G&K") in the above-referenced docket. G&K seeks a decision that non-conforming 2002 Ferrari 360 passenger cars manufactured before September 1, 2002 are eligible for importation into the United States.

G&K, however, has not established that non-U.S. 2002 Ferrari 360s are "capable of being readily altered to comply with applicable motor vehicle safety standards." 49 U.S.C. § 30141(a)(1)(A)(iv). Nor has G&K exhaustively identified the modifications that would be needed to render the non-U.S. 2002 Ferrari 360s compliant with all applicable safety-related standards.¹

¹ The non-U.S. vehicles also are not "substantially similar" to U.S.-certified vehicles. See 49 U.S.C. § 30141(a)(1)(A); 49 C.F.R. § 593.5(a)(1)(i). Because, however, the agency has rejected similar arguments made by FNA in the past, and because the agency has not defined "substantial similarity" in the import context, we will not discuss this issue here, except to point out that, at a minimum, a non-U.S.-certified vehicle can be regarded as substantially similar to a U.S.-certified vehicle only if there are no "under-skin" structural differences between the vehicles, and crash testing or other extensive certification testing or modeling would not be necessary to determine whether modifications to the non-U.S. vehicle are sufficient to bring it into compliance with U.S.

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We set forth particular deficiencies in G&K's analysis, as well as other issues, below.

FMVSS No. 201: G&K identifies seven parts that would need to be replaced in the nonconforming 2002 Ferrari 360s to bring the vehicles into compliance with FMVSS No. 201. This underestimates the scope of the changes necessary to bring the nonconforming 360s into compliance with FMVSS No. 201. Like the 2001 Ferrari 360s at issue in the importation eligibility decision in Docket No. NHTSA-2001-9628, there are approximately sixteen different parts that would need to be installed on the nonconforming 360s in order to achieve compliance with FMVSS No. 201. At a minimum, then, G&K should be held to the same requirement to which the petitioner in Docket No. NHTSA-2001-9628 agreed, which was to change *all* upper interior parts in the non-U.S. 360s to U.S.-model components. *See* Decision That Nonconforming 2001 Ferrari 360 Passenger Cars are Eligible for Importation, 67 Fed. Reg. 17,483, 17,484 (Apr. 10, 2002) (hereinafter "NHTSA-2001-9628 Decision").

FMVSS No. 225: G&K identifies four parts that would need to be replaced in the non-U.S. 2002 Ferrari 360s to bring the vehicles into compliance with FMVSS No. 225. This, too, underestimates the scope of the changes necessary to bring the non-U.S. 360s into compliance. Like the 2001 Ferrari 360s at issue in Docket No. NHTSA-2001-9628, there are approximately sixteen (not four) parts differences between the U.S.- and non-U.S.-certified 2002 Ferrari 360s that relate to FMVSS No. 225. Because only the U.S. version of the 2002 Ferrari 360 has been certified to comply with FMVSS No. 225, all of these parts would have to be replaced with the parts used in U.S.-certified cars to assure that the non-U.S. 2002 Ferrari 360s conform to the standard.

FMVSS No. 301: G&K grossly underestimates the differences between the U.S. and non-U.S. 2002 Ferrari 360s with respect to FMVSS No. 301. As was the case with the 2001 Ferrari 360s at issue in Docket No. NHTSA-2001-9628, there are numerous differences in the

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safety standards. *See* Determination That A Vehicle Not Originally Manufactured To Conform To The Federal Motor Vehicle Safety Standards Is Eligible For Importation, 54 Fed. Reg. 40,093, 40,096 (Sept. 25, 1989). Under these standards, there clearly is a disputed question of fact about whether the non-conforming 2002 Ferrari 360s are substantially similar to U.S. 2002 Ferrari 360s, and G&K has not carried its burden of establishing that the vehicles are substantially similar. *See* 49 C.F.R. § 593.6(a)(4) (petitioner must present "[d]ata, views and arguments demonstrating that the vehicle identified by the petition under paragraph (a)(1) of this section is substantially similar to the vehicle identified by the petitioner under paragraph (a)(2) of this section"). Finally, we urge the agency to provide long overdue guidance to the public, manufacturers, and importers concerning the agency's interpretation of "substantial similarity."

parts (and in the location of parts) of the fuel systems of U.S.- and non-U.S.-certified 2002 Ferrari 360s. Thus, more than 100 parts relating to FMVSS 301 differ between the U.S.- and non-U.S.-certified 2002 Ferrari 360s. For instance, not only do the charcoal canister, air pump, fuel filler neck, and rollover valve differ, but so, too, do the left and right fuel tanks, the electrical wiring, the exhaust pipes, and catalytic converter. These differences cannot be addressed merely by replacing the four parts discussed by G&K in its petition, and G&K has not, to our knowledge, submitted crash test or other data indicating that the mere replacement of the four parts that it refers to in its petition would bring the nonconforming 360s into compliance with FMVSS 301. Thus, G&K has not carried its burden of showing that the 360s are readily modifiable to achieve compliance with FMVSS 301. This failure would fully justify the denial of G&K's petition. Consequently, at a minimum, G&K should be required to make *all* modifications necessary to render the fuel system of the non-U.S. 360s *identical* to that of U.S.-certified 360s. This is what the petitioner promised to do as a condition to the granting of its petition in Docket No. NHTSA-2001-9628, which concerned non-conforming 2001 Ferrari 360s. *See* NHTSA-2001-9628 Decision, 67 Fed. Reg. at 17,485. There is no reason to hold G&K to a lesser standard.

49 C.F.R. Part 581 Bumper Standard: In its petition, G&K indicates that it would modify and reinforce the bumpers of the non-U.S. 2002 Ferrari 360s to meet the bumper standard. In a follow-up letter, however, G&K states that “[a]t this time we will be replacing the bumpers with U.S. bumpers instead of modifying them.” Letter from George Gemayel to Luke Loy, dated July 12, 2002 (docketed as part of NHTSA-2002-13219-2). We do not understand what G&K means when it says that it intends to replace the bumpers “[a]t this time.” Because G&K apparently has been unable to establish that the modifications proposed in its petition would, in fact, bring the bumpers into conformity with Part 581, this agency should condition any grant of G&K's petition on a requirement that G&K *replace* the bumpers of *all* non-conforming 2002 Ferrari 360s with U.S. bumpers, instead of modifying them. G&K should not be permitted to change its method of conforming the vehicles with Part 581 at some undisclosed time in the future.

* * *

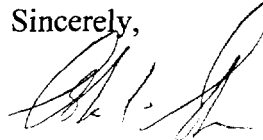
G&K has identified a significant number of modifications that would be necessary to bring the non-conforming 2002 Ferrari 360s into compliance with Federal safety standards. As we have shown, there are a significant number of additional modifications that G&K has *not* identified that also would be required to conform the cars to U.S. safety standards. The scale of the modifications to non-conforming 2002 Ferrari 360s that would be necessary to achieve compliance with applicable safety standards precludes a finding that the cars are “capable of being *readily* modified to conform to all applicable Federal motor vehicle safety standards.” 49 C.F.R. § 593.5(a)(1)(i) (emphasis added). Moreover, it would be economically infeasible to make all of the changes necessary to bring the cars into conformity with all applicable safety standards, which raises a question about whether all of the required changes would in fact be made were the petition to be granted. Finally, the extent of the differences between the U.S.- and

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non-U.S.-certified 360s also precludes a finding that the non-U.S.-certified 360s are substantially similar to the U.S. versions.

Accordingly, G&K's petition should be denied.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam C. Sloane", written over a horizontal line.

Adam C. Sloane

cc: Docket Management, Room PL-401 (by hand delivery)